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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,375	12/06/2005	Jean-Luc Gesztes	187121/US	2410
25763 7590 10/14/2008 DORSEY & WHITNEY LLP INTELLECTUAL PROPERTY DEPARTMENT SUITE 1500 50 SOUTH SIXTH STREET MINNEAPOLIS, MN 55402-1498				
EXAMINER NATHAN, SHYAM				
ART UNIT		PAPER NUMBER		
4161				
MAIL DATE		DELIVERY MODE		
10/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/552,375

**Applicant(s)**

GESZTESI ET AL.

**Examiner**

SHYAM NATHAN

**Art Unit**

4161

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 12/08/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-9 are currently pending and are the subject of this Office Action. This is the first Office Action based on the merits of the claims.

#### ***Priority***

The earliest effective U.S. filing date afforded the instantly claimed invention is 04/07/2004, the filing date of application PCT/FR04/00864.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 provides for the use the cosmetic composition as claimed in instant claims 1, characterized in that it is intended for anti-aging action on the skin, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it

merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 8 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claims 1-9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "Rich"(as in Fucose 'Rich' Oligo Polysaccharides- FROP's) in claim 1 is a relative term which renders the claim indefinite. The term "rich" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

It is not clear what level of the closeness constitutes of "Rich". Therefore, one would not know what are the metes and bounds of the claims. Since, instant claims 2-9 are dependent on instant claim 1, they are also rejected.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "especially" does not make it clear whether or not the composition is limited to being a cream, or if it can have other forms.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pineau et al. (US Patent No. 6,296,856; Issued Oct.2, 2001).

Instant claims 1-7 are drawn to an antiaging cosmetic composition for the skin, characterized in that it comprises at least one rhamnose compound RROPs, one fucose compound FROPs and a cosmetically acceptable excipient. Characterized in that it comprises, relative to the total weight of the polysaccharide mixture 1/10 of rhamnose compound RROPs and 9/10 of fucose compound FROPs,, 1/5 of rhamnose compound

RROPs and 4/5 of fucose compound FROPs, 1/3 of rhamnose compound RROPs and 2/3 of fucose compound FROPs, 1/2 of rhamnose compound RROPs and 1/2 of fucose compound FROPs, and characterized in that the oligosaccharide mixture is used in a proportion of between about 0. 1% and 10% by weight relative to the total weight of the composition in the form of a cream.

Pineau et al. teaches of a cosmetic/pharmaceutical/dermatological compositions which is intended to promote desquamation of the skin and/or to stimulate epidermal renewal and, thus, to combat intrinsic and/or extrinsic aging of the skin, that comprises rhamnose and fucose polyholosides, which is a combination of oligo and polysaccharides (Abstract and column 3, lines 45-65) and can comprise 10-90% by weight of the polyholosides/polysaccharide mixture, individually (Abstract and column 4, lines 13-20) and can comprise  $10^{-3}$  – 25% weight of the total composition. (Abstract and column 4, lines 55-60). The composition can also comprise water, as in an oil and water emulsion and can take the form of a cream. (Abstract and column 5, lines 1-6)

Although the Pineau et al. suggests the use of fucose and rhamnose in the composition, it is not immediately envisaged that fucose and rhamnose are used together and therefore the instant rejection is made under obviousness.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to look at the guidance provided by Pineau et al and incorporate both fucose and rhamnose in the composition. One would have been motivated to do so since Pineau et al. suggests the use of a mixture of heterogeneous

polyholosides (Abstract and column 4, lines 18-20) and states that polyholosides improve the stabilization of the final composition, when its in emulsion form.(Abstract and column 3, lines 5-10). Therefore, if a skilled artisan wanted to improve the stability of the cosmetic emulsion, one would have been motivated to utilize both fucose and rhamnose.

Furthermore, the amount of each compound relative to the total polysaccharide mixture as in claims 2-6 and amount of each compound relative to the total weight of the composition as in claim 7 can be optimized through routine experimentation depending on the amount of rhamnose, fucose, and water one would prefer in the composition.

Instant claim 9, is drawn to a cosmetic treatment method for the skin, characterized in that a cosmetic composition comprising at least one polysaccharide mixture as defined in claim 1 is applied to the skin

Pineau et al. teaches of a method promoting desquation of the skin by using cosmetic/pharmaceutical/dermatological compositions which is intended to promote desquamation of the skin and/or to stimulate epidermal renewal and, thus, to combat intrinsic and/or extrinsic aging of the skin, that comprises rhamnose and fucose polyholosides, which is a combination of oligo and polysaccharides (Abstract and column 3, lines 45-65) and can comprise 10-90% by weight of the polyholosides/polysaccharide mixture, individually (Abstract and column 4, lines 13-20) and can comprise 10<sup>-3</sup> – 25% weight of the total composition.(Abstract and column 4,

lines 55-60).The composition can also comprise water , as in an oil and water emulsion and can take the form of a cream.(Abstract and column 5, lines 1-6)

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHYAM NATHAN whose telephone number is (571)270-5753. The examiner can normally be reached on Mon-Thurs 8:30a.m. - 5:00p.m..



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Nolan can be reached on 571-272-0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SN

/Ashwin Mehta/  
Primary Examiner, Technology Center 1600